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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,630	10/03/2000	Leon Forman	320-4(a)	5469

7590 02/09/2004

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EXAMINER

PALABRICA, RICARDO J

ART UNIT PAPER NUMBER

3641

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/677,630

Applicant(s)

FORMAN, LEON

Examiner

Rick Palabrica

Art Unit

3641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-10.

Claim(s) withdrawn from consideration: 11-16.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

MICHAEL
SUPERVISORY PATENT EXAMINER

Continuation of 2. NOTE:

New issues are amended claim 1 and new claims 17 and 18.

Applicant traversed the finality of the rejection of claims in Office Action dated 8/20//03 on the grounds that "no claim amendments were made in Applicant's previous reply. The Examiner disagrees because the official record of prosecution of this case will confirm the validity of the final rejection.

Here is a chronology of relevant activities on this application that disproves the applicant's allegations:

9/5/02: Non-final rejection mailed to applicant;

3/05/03: Applicant responded to said non-final action and included an amendment to claim 1;

5/06/03: Final rejection mailed to applicant;

8/4/03: Applicant requested reconsideration of finality of 5/6/03 Office Action;

8/20/03: Examiner withdrew the 5/6/03 Final Office Action and replaced it with this 8/20/03 Final Office Action. The Examiner inadvertently referred to the 5/6/03 Final Office Action as a 9/5/02 Final Office Action. It is obvious that the date was a plain typographical error. Therefore, the 3/05/03 amendment of the claims necessitated the new grounds for rejection in the 8/20/03 Final Office Action.